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IN THE
Supreme Court of the United States

OCTOBER TERM, 1942.

Plaintiff

No. 847.

vs. [unclear]

WILBUR JACKSON, FRANK WILLIAMS AND
FREEMAN HOLTON,

Petitioners,

vs.

PATRICK J. BRADY, WARDEN OF THE MARYLAND
PENITENTIARY,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT AND BRIEF
IN SUPPORT OF PETITION.**

C. ARTHUR EBY,
WILLIAM CURRAN,
Attorneys for Petitioners.

CONTENTS.

PETITION FOR WRIT OF CERTIORARI.

| | PAGE |
|--------------------------------------------------------------------|------|
| I. MATTER INVOLVED | 2 |
| II. JURISDICTION | 2 |
| III. QUESTIONS PRESENTED | 3 |
| IV. REASONS FOR GRANTING THE WRIT | 4-6 |
| V. SUBMITTING TRANSCRIPT OF RECORD AND SUP- PORTING BRIEF | 6-7 |

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| JURISDICTIONAL GROUND | 9-10 |
| QUESTIONS IN CONTROVERSY | 10 |
| FACTS OF THE CASE | 10-16 |
| ARGUMENT | 16-26 |
| I. There Was Such Racial Discrimination in the Selection and Composition of the Grand Jury which Indicted, and of the Jury Lists from which the Special Jury Panel which Tried the Petitioners was Chosen, as Amounted to a Denial to them of the Equal Protection of the Laws | 16 |
| II. There was no Waiver of the Constitutional Rights of the Petitioners, Under the Facts and Circumstances of the Case, at Their Trial in the State Court | 23 |
| CONCLUSION | 26 |

TABLE OF CASES CITED.

| | PAGE |
|---------------------------------------------------------|----------------|
| Betts v. Brady, 316 U. S. 455 | 3, 11 |
| Frank v. Mangum, 237 U. S. 309 | 26 |
| Hale v. Kentucky, 303 U. S. 613 | 16 |
| Hill v. Texas, 316 U. S. 400 | 6, 16, 22 |
| Jackson v. Brady, F. (2) CCA (4) 2/9/43 | 2-3 |
| Jackson v. Brady, 47 Fed. Sup. 362, D. C., Md. | 2, 3 |
| Jackson v. Brady, 26 Atl. (2) 815, Md. | 3, 11 |
| Lee v. Md., 163 Md. 56 | 16 |
| Mitchell v. Youell, 130 Fed. (2) 880, CCA (4) | 6 |
| Mooney v. Holohan, 294 U. S. 103 | 12, 26 |
| Moore v. Dempsey, 261 U. S. 86 | 26 |
| Neal v. Delaware, 103 U. S. 370 | 16 |
| Norris v. Alabama, 294 U. S. 587 | 16 |
| Pierre v. Louisiana, 306 U. S. 354 | 16 |
| Smith v. O'Grady, 312 U. S. 329 | 12 |
| Smith v. Texas, 311 U. S. 128 | 16, 17, 18, 21 |
| Strauder v. West Va., 100 U. S. 303 | 16 |
| Tumey v. Ohio, 273 U. S. 510 | 22 |

STATUTES.

| | |
|--------------------------------------------------------------------------------|--------|
| Charter and Public Local Laws of Baltimore City, 1938 ed., (R. 21-32) | 14, 24 |
| Maryland Code, Public General Laws, (1939) Art. 51, sec. 19 | 16, 25 |
| 28 United States Code, Annotated, Secs. 347 and 462 (c) | 10 |

RULES OF COURT.

| | |
|--------------------------------------------------------------------|----|
| Rule 6 of the Supreme Bench of Baltimore City, (R. 33-37) | 14 |
|--------------------------------------------------------------------|----|

REPORTS.

| | |
|---------------------------------------------------------------------------------------------|----|
| Report of Committee of District Judges of the United States on Selection of Jurors | 17 |
|---------------------------------------------------------------------------------------------|----|

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FOR THE FOURTH CIRCUIT.**

*To the Honorable Justices of the Supreme Court
of the United States:*

Wilbur Jackson, Frank Williams and Freeman Holton,
by C. Arthur Eby and William Curran, their attorneys,
pray that a writ of certiorari may issue to review the
decision of the United States Circuit Court of Appeals
for the Fourth Circuit in the above entitled case.

I.

MATTER INVOLVED.

The subject-matter of this proceeding relates to the decision of the United States Circuit Court of Appeals for the Fourth Circuit (reported in — F. (2) —; opinion by Soper, Cir. J., R. 110-121), affirming the decision of the District Court of the United States for the District of Maryland (reported in 47 Fed. Sup. 362; opinion by Chesnut, D. J., R. 1-21), dismissing after hearing the petition for habeas corpus which the petitioners, Negro State prisoners convicted of murder and now under sentence of death by a Maryland State Court, had sought upon the alleged ground that there had been racial discrimination in the selection and composition of the Grand and Petit Juries by which they had been indicted and tried in the State Court. The facts relating to such discrimination are fully set out in the transcript of the record accompanying this petition, and are summarized in the brief supporting the same.

II.

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered on February 9, 1943.

The jurisdiction of this Court to review the decision in question is invoked under the authority of the Fourteenth Amendment to the Constitution of the United States which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws.

III.

QUESTIONS PRESENTED.

The District Court, affirmed by the Circuit Court of Appeals, (*Jackson v. Brady*, supra) found that the petitioners had exhausted their remedies in the State Courts, without avail, to correct the judicial processes thereof, by appeal from the judgments of sentence by the State trial Court to the Court of Appeals of Maryland, the State's highest appellate tribunal (*Jackson v. Brady*, 26 Atl. (2) 815), and later by an unsuccessful application to a State Judge for release on habeas corpus, from whose decision no appeal is allowable in Maryland to any State Court, (*Betts v. Brady*, 316 U. S. 455) and that, therefore, there was no bar upon this ground to an application by the petitioners for habeas corpus in the United States Court.

The questions for review upon certiorari, therefore, are:

(1) Whether there was such racial discrimination in the selection and composition of the Grand Jury which indicted and of the Petit Jury which tried the petitioners in the State Court as would amount to a denial to them of the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?

(2) Whether, under the facts and circumstances of the case, the petitioners waived their Constitutional rights?

Both the District Court and the Circuit Court of Appeals found in the negative as to the first question and in the affirmative as to the second question above stated.

In these findings and conclusions, it is submitted, there was error.

IV.

REASONS FOR GRANTING THE WRIT.

Reasons relied on for the allowance of a writ of certiorari in this case may be summarized as follows:

(1) That, under the decisions of this Court, the record shows that there was such racial discrimination in the selection and composition of the Grand and Petit Juries which indicted and tried the petitioners in the State Court as amounted to a denial to them of the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(2) That the decision of the District Court and that of the Circuit Court of Appeals in this case are in conflict with the decisions of this Court upon the questions involved.

(3) That the question of racial discrimination, in the matter of jury selection and composition at the trial of the petitioners in the State Court, could not be determined by the Maryland Court of Appeals in the appeal from the judgments of the trial Court imposing the death sentence, for the reason that the challenge of counsel for the defendants to the jury array was overruled by the Court without development of the facts, and the record on appeal was, therefore, not sufficient upon the question. Certiorari to the Maryland Court of Appeals from this Court in the case would likewise have been ineffectual, for the same reason, to review the issues involved.

(4) That the petitioners, under the circumstances of the case, did not waive their Constitutional right to be

guaranteed the equal protection of the laws at their trial because:

(a) The trial Judge as the Chief Judge of the Supreme Bench of Baltimore City, the members of which under the statutory law select the Grand Jurors for Baltimore City, knew that the Grand Jury of twenty-three members which indicted the petitioners, as well as each Grand Jury for many years past in Baltimore City, had been arbitrarily limited to one member of the colored race, which method of selection amounted to unlawful racial discrimination, in the case of a Negro, indicted, and it was, therefore, the duty of the trial Judge to protect the petitioners in their Constitutional rights, whether or not they made a specific objection to the Grand Jury as so constituted.

(b) That, where the presiding Judge knows the facts, a Negro defendant ought not to be prejudiced by being forced either to make formal complaint that he is the victim of racial discrimination, or, failing to make such complaint, be held to have waived his right to object.

(c) That the petitioners' counsel, during the examination of jurors on their voir dire at the trial in the State Court, did challenge the array of Petit Jurors upon the ground of racial discrimination in their selection, but their challenge was promptly overruled by the presiding Judge who discouraged further inquiry into the matter (R. 37-39).

(d) That it was not practical, and indeed may have been prejudicial to the Negro defendants, at the opening of their trial, to inquire into the question of racial discrimination in the selection of the Petit Jury panels.

(5) That it is apparent, under the decisions of this Court, that the methods employed in the selection of the Grand and Petit Juries which indicted and tried the petitioners in the State Court amounted to racial discrimination against the petitioners, and if the sentences of death imposed by the State Court are carried out because of a technicality in failing to interpose timely objection, then the petitioners will be executed without due regard to their Constitutional rights. This Court has the power to prevent such a wrong. The release of the petitioners on habeas corpus will not preclude their re-indictment and re-trial in accordance with Constitutional methods, and such procedure would not involve the question of former jeopardy (*Hill v. Texas*, 316 U. S. 400, 406; *Mitchell v. Youell*, 130 Fed. (2) 880, 882.

(6) If there is any doubt whatever that the petitioners were protected in their Constitutional rights at their trial, which resulted in the imposition of the death sentence, then the judgments of execution should not be carried out, and a full review of their case by this Court should be granted. The petitioners should not be held to have waived rights so important as those which are guaranteed by the Constitution and which are designed to afford to all persons of whatever race, creed or color—the least deserving as well as the most virtuous—the equal protection of the laws.

V.

TRANSCRIPT OF RECORD AND SUPPORTING BRIEF.

The petitioners submit with this petition a certified copy of the transcript of the record, including all proceedings in both the District Court and the Circuit Court of Appeals, and a brief in support of this petition.

WHEREFORE, it is respectfully submitted:

(1) That this petition should be granted, and that a writ of certiorari should issue as herein prayed;

(2) That the petitioners may have such other and further relief, remedy and processes in the premises as to this Court may seem proper.

C. ARTHUR EBY,
WILLIAM CURRAN,
Attorneys for Petitioners.

State of Maryland, City of Baltimore, to wit:

C. Arthur Eby, being duly sworn, deposes and says that he is one of the attorneys for the petitioners, Wilbur Jackson, Frank Williams and Freeman Holton; that he prepared the foregoing petition; and that the allegations thereof are true as he verily believes.

C. ARTHUR EBY.

Subscribed and sworn to before me by the said C. Arthur Eby, this 22nd day of March, 1943.

THELMA B. TODD,

(Seal.)

Notary Public.